

AMENDED IN ASSEMBLY JULY 1, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE MARCH 23, 2015

SENATE BILL

No. 253

Introduced by Senator Monning

(Principal coauthor: Assembly Member Chiu)

(Coauthors: Senators Beall and Leno)

(Coauthor: Assembly Member Gatto)

February 18, 2015

An act to amend Section 4064.5 of the Business and Professions Code, and to amend, repeal, and add Section 369.5 of, and to add Section 369.4 to, the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 253, as amended, Monning. Dependent children: psychotropic medication.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law authorizes only a juvenile court judicial officer to make orders regarding the administration of psychotropic medications for a dependent child who has been removed from the physical custody of his or her parent. Existing law requires the court authorization for

the administration of psychotropic medication to a child be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication.

This bill, commencing July 1, 2016, would require that an order authorizing the administration of psychotropic medications to a dependent child be granted only upon the court's determination that there is clear and convincing evidence that administration of the medication is in the best interest of the child and that specified requirements have been met, including a requirement that the prescribing physician confirms that he or she has conducted a comprehensive evaluation of the child, as specified. The bill would prohibit the court from authorizing the administration of psychotropic medications to a child under other specified circumstances, unless a 2nd independent medical opinion is obtained from a child psychiatrist or a behavioral pediatrician. The bill would prohibit the court from authorizing the administration of a psychotropic medication unless the court is provided documentation that appropriate laboratory screenings and tests for the child have been completed no more than 30 days prior to submission of the request to the court. The bill would impose additional requirements on the court to implement these provisions and to conduct review hearings, as specified. The bill would require the child's social worker to submit a report to the court prior to the review hearing, to include information from the child, the child's caregiver, the public health nurse, and the court appointed special advocate. By increasing the duties of county social workers, this bill would create a state-mandated local program. The bill would authorize psychotropic medication to be administered in an emergency without court authorization. The bill would require court authorization to be sought as soon as practical, but in no case more than 2 court days after emergency administration of the psychotropic medication. The bill would require the Judicial Council to adopt rules to implement these provisions.

This bill would require the State Department of Health Care Services, in collaboration with the Judicial Council, to identify resources to assist courts in securing 2nd review and 2nd opinions in order to avoid undue delays in the authorization of psychotropic medications.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4064.5 of the Business and Professions
2 Code is amended to read:
3 4064.5. (a) A pharmacist may dispense not more than a 90-day
4 supply of a dangerous drug other than a controlled substance
5 pursuant to a valid prescription that specifies an initial quantity of
6 less than a 90-day supply followed by periodic refills of that
7 amount if all of the following requirements are satisfied:
8 (1) The patient has completed an initial 30-day supply of the
9 dangerous drug.
10 (2) The total quantity of dosage units dispensed does not exceed
11 the total quantity of dosage units authorized by the prescriber on
12 the prescription, including refills.
13 (3) The prescriber has not specified on the prescription that
14 dispensing the prescription in an initial amount followed by
15 periodic refills is medically necessary.
16 (4) The pharmacist is exercising his or her professional
17 judgment.
18 (b) For purposes of this section, if the prescription continues
19 the same medication as previously dispensed in a 90-day supply,
20 the initial 30-day supply under paragraph (1) of subdivision (a) is
21 not required.
22 (c) A pharmacist dispensing an increased supply of a dangerous
23 drug pursuant to this section shall notify the prescriber of the
24 increase in the quantity of dosage units dispensed.
25 (d) In no case shall a pharmacist dispense a greater supply of a
26 dangerous drug pursuant to this section if the prescriber personally
27 indicates, either orally or in his or her own handwriting, "No
28 change to quantity," or words of similar meaning. Nothing in this
29 subdivision shall prohibit a prescriber from checking a box on a
30 prescription marked "No change to quantity," provided that the
31 prescriber personally initials the box or checkmark. To indicate

1 that an increased supply shall not be dispensed pursuant to this
2 section for an electronic data transmission prescription as defined
3 in subdivision (c) of Section 4040, a prescriber may indicate “No
4 change to quantity,” or words of similar meaning, in the
5 prescription as transmitted by electronic data, or may check a box
6 marked on the prescription “No change to quantity.” In either
7 instance, it shall not be required that the prohibition on an increased
8 supply be manually initialed by the prescriber.

9 (e) This section does not apply to psychotropic medication or
10 psychotropic drugs as described in Section 369.5 of the Welfare
11 and Institutions Code.

12 (f) Nothing in this section shall be construed to require a health
13 care service plan, health insurer, workers’ compensation insurance
14 plan, pharmacy benefits manager, or any other person or entity,
15 including, but not limited to, a state program or state employer, to
16 provide coverage for a dangerous drug in a manner inconsistent
17 with a beneficiary’s plan benefit.

18 SEC. 2. Section 369.4 is added to the Welfare and Institutions
19 Code, to read:

20 369.4. The State Department of Health Care Services, in
21 collaboration with the Judicial Council, shall identify resources,
22 which may include, but need not be limited to, university-based
23 consultation services, to assist the courts in securing second review
24 and second opinions in order to avoid undue delays in the
25 authorization of medications pursuant to Section 369.5.

26 SEC. 3. Section 369.5 of the Welfare and Institutions Code is
27 amended to read:

28 369.5. (a) If a child is adjudged a dependent child of the court
29 under Section 300 and the child has been removed from the
30 physical custody of the parent under Section 361, only a juvenile
31 court judicial officer shall have authority to make orders regarding
32 the administration of psychotropic medications for that child. The
33 juvenile court may issue a specific order delegating this authority
34 to a parent upon making findings on the record that the parent
35 poses no danger to the child and has the capacity to authorize
36 psychotropic medications. Court authorization for the
37 administration of psychotropic medication shall be based on a
38 request from a physician, indicating the reasons for the request, a
39 description of the child’s diagnosis and behavior, the expected
40 results of the medication, and a description of any side effects of

1 the medication. On or before July 1, 2000, the Judicial Council
2 shall adopt rules of court and develop appropriate forms for
3 implementation of this section.

4 (b) (1) In counties in which the county child welfare agency
5 completes the request for authorization for the administration of
6 psychotropic medication, the agency is encouraged to complete
7 the request within three business days of receipt from the physician
8 of the information necessary to fully complete the request.

9 (2) Nothing in this subdivision is intended to change current
10 local practice or local court rules with respect to the preparation
11 and submission of requests for authorization for the administration
12 of psychotropic medication.

13 (c) Within seven court days from receipt by the court of a
14 completed request, the juvenile court judicial officer shall either
15 approve or deny in writing a request for authorization for the
16 administration of psychotropic medication to the child, or shall,
17 upon a request by the parent, the legal guardian, or the child's
18 attorney, or upon its own motion, set the matter for hearing.

19 (d) Psychotropic medication or psychotropic drugs are those
20 medications administered for the purpose of affecting the central
21 nervous system to treat psychiatric disorders or illnesses. These
22 medications include, but are not limited to, anxiolytic agents,
23 antidepressants, mood stabilizers, antipsychotic medications,
24 anti-Parkinson agents, hypnotics, medications for dementia, and
25 psychostimulants.

26 (e) Nothing in this section is intended to supersede local court
27 rules regarding a minor's right to participate in mental health
28 decisions.

29 (f) This section shall not apply to nonminor dependents, as
30 defined in subdivision (v) of Section 11400.

31 (g) This section shall remain in effect only until July 1, 2016,
32 and as of January 1, 2017, is repealed, unless a later enacted statute,
33 that is enacted before January 1, 2017, deletes or extends that date.

34 SEC. 4. Section 369.5 is added to the Welfare and Institutions
35 Code, to read:

36 369.5. (a) If a child is adjudged a dependent child of the court
37 under Section 300 and the child has been removed from the
38 physical custody of the parent under Section 361, only a juvenile
39 court judicial officer shall have authority to make orders regarding
40 the administration of psychotropic medications for that child. The

1 juvenile court may issue a specific order delegating this authority
2 to a parent, upon making findings on the record that the parent
3 poses no danger to the child and has the capacity to authorize
4 psychotropic medications. Court authorization for the
5 administration of psychotropic medication shall be based on a
6 request from a physician, indicating the reasons for the request, a
7 description of the child's diagnosis and behavior, the expected
8 results of the medication, and a description of any side effects of
9 the medication. On or before July 1, 2016, the Judicial Council
10 shall adopt rules of court and develop appropriate forms for
11 implementation of this section. Whenever the court authorizes the
12 administration of a psychotropic medication, it shall ensure that
13 the administration of the psychotropic medication is only one part
14 of a comprehensive treatment plan for the child that shall include
15 and specify the psychosocial, behavioral, and alternative services,
16 if any, the child will receive in addition to any authorized
17 medication.

18 (b) (1) An order authorizing the administration of psychotropic
19 medications pursuant to this section shall be granted only upon
20 the court's determination that there is clear and convincing
21 evidence that administration of the medication is in the best interest
22 of the child based on a determination that the anticipated benefits
23 of the psychotropic medication outweigh the short- and long-term
24 risks associated with the medications. An order authorizing the
25 administration of psychotropic medication pursuant to this section
26 shall not be granted if the court determines that the medication is
27 being used as punishment, for the convenience of staff, as a
28 substitute for other less invasive treatments, or in quantities or
29 dosages that interfere with the child's treatment program.

30 (2) An order authorizing the administration of psychotropic
31 medications pursuant to this section shall be granted only if the
32 court determines all of the following:

33 (A) The court is provided documentation confirming the child's
34 caregiver has been informed, and the child has been informed in
35 an age and developmentally appropriate manner in the primary
36 language of the child, about the recommended medications, the
37 anticipated benefits, the nature, degree, duration, and probability
38 of side effects and significant risks commonly known by the
39 medical profession, and of psychosocial treatments and
40 interventions specific to the identified disorder and symptoms to

1 be considered concurrently with or as an alternative to the
2 medication.

3 (i) The documentation shall state that the child and the child's
4 caregiver have been asked whether either have concerns regarding
5 the medication, and if so, shall describe the nature of those
6 concerns. ~~The documentation shall confirm that the child has been~~
7 ~~informed of the right to request a hearing pursuant to subdivision~~
8 ~~(g).~~

9 (ii) *The documentation shall confirm that the child has been*
10 *informed of the right to object to the authorization of psychotropic*
11 *medication and to request a hearing pursuant to subdivision (g).*

12 (ii)
13 (iii) ~~The documentation shall include the written informed~~
14 ~~consent of a child who is 14 years of age or older, after being~~
15 ~~advised pursuant to this subparagraph. assent or refusal to assent~~
16 ~~of a child who is 12 years of age or older.~~

17 (B) The prescribing physician submitting the request for
18 psychotropic medication ~~confirms that he or she has~~ conducted a
19 comprehensive examination of the child in compliance with Section
20 2242 of the Business and Professions Code and consistent with
21 the Psychiatric Evaluation and Diagnosis provisions included in
22 the Guidelines for the Use of Psychotropic Medication with
23 Children and Youth in Foster Care issued by the state, which takes
24 into account all of the following:

25 (i) The child's trauma history.

26 (ii) ~~The child's medical records,~~ *health care history*, including
27 medication history.

28 (iii) Multiple sources of information, ~~including,~~ *that should*
29 *include*, but *are* not limited to, the child, the child's parents,
30 relatives, teacher, caregiver or caregivers, past prescribers of
31 psychotropic medication, or other health care providers.

32 (C) The prescribing physician also confirms all of the following:

33 (i) There are no less invasive treatment options available to meet
34 the needs of the child.

35 (ii) The dosage or dosage range requested is appropriate for the
36 child.

37 (iii) The short- and long-term risks associated with the use of
38 psychotropic medications by the child does not outweigh the
39 reported benefits to the child.

1 (iv) All appropriate laboratory screenings, measurements, or
2 tests for the child have been completed in accordance with accepted
3 medical guidelines.

4 (D) A plan is in place for regular monitoring of the child's
5 medication and psychosocial treatment plan, the effectiveness of
6 the medication and psychosocial treatment, and any potential side
7 effects of the medication, by the physician in consultation with
8 the caregiver, mental health care provider, and others who have
9 contact with the child, as appropriate.

10 (3) The person or entity submitting the request for authorization
11 of the administration of psychotropic medication is responsible
12 for providing the necessary documentation of the clinical
13 appropriateness of the proposed psychotropic medication and shall
14 bear the burden of proof established in this section.

15 (c) A court shall not issue an order authorizing the administration
16 of psychotropic medications for a child unless a second
17 independent medical opinion is obtained from a child psychiatrist
18 or a behavioral pediatrician if one or more of the following
19 circumstances exist:

20 (1) The request is for any class of psychotropic medication for
21 a child who is five years of age or younger.

22 (2) The request would result in the child being administered
23 three or more psychotropic medications concurrently.

24 (3) The request is for the concurrent administration of any two
25 drugs from the same class unless the request is for medication
26 tapering and replacement that is limited to no more than 30 days.

27 (4) The request is for a dosage that exceeds the amount
28 recommended for children.

29 (d) The court shall not authorize the administration of the
30 psychotropic medication unless the court is provided with
31 documentation that all of the appropriate laboratory screenings,
32 measurements, or tests for the child have been completed *no more*
33 *than 30 days prior to submission of the request to the court* in
34 accordance with accepted medical ~~guidelines no more than 30 days~~
35 ~~prior to submission of the request to the court.~~ *guidelines.*

36 (e) (1) No later than 60 days after the authorization of a new
37 psychotropic medication is granted or at the next review hearing
38 scheduled for the child pursuant to Section 366, 366.21, 366.22,
39 ~~or 366.31, child,~~ if scheduled no earlier than 45 days after the

1 authorization of a new psychotropic medication, the court shall
2 conduct a review hearing to determine all of the following:

3 (A) Whether the child is taking the medication or medications.

4 (B) Whether psychosocial services and other aspects of the
5 child's treatment plan have been provided to the child.

6 (C) To what extent the symptoms for which the medication or
7 medications were authorized have been alleviated.

8 (D) Whether more time is needed to evaluate the effectiveness
9 of the medication or medications.

10 (E) What, if any, adverse effects the child has suffered.

11 (F) Any steps taken to address those effects.

12 (G) The date or dates of followup visits with the prescribing
13 physician since the medication or medications were authorized.

14 (H) Whether the appropriate followup laboratory screenings
15 have been performed and their findings.

16 (2) Prior to the review, the child's social worker shall submit a
17 report to the court and to counsel for the parties, which shall
18 include information from the child, the child's caregiver, the public
19 health nurse, and the court appointed special advocate, if any.

20 (3) If based upon this review, the court determines that the
21 proffered benefits of the medication have not been demonstrated
22 or that the risks of the medication outweigh the benefits, the court
23 shall reconsider, modify, or revoke its authorization for the
24 administration of medication.

25 (f) (1) In counties in which the county child welfare agency
26 completes the request for authorization for the administration of
27 psychotropic medication, the agency is encouraged to complete
28 the request within three business days of receipt from the physician
29 of the information necessary to fully complete the request.

30 (2) This subdivision is not intended to change current local
31 practice or local court rules with respect to the preparation and
32 submission of requests for authorization for the administration of
33 psychotropic medication.

34 (g) Within seven court days from receipt by the court of a
35 completed request, the juvenile court judicial officer shall either
36 approve or deny in writing a request for authorization for the
37 administration of psychotropic medication to the child, refer the
38 request for a second opinion as required by subdivision (c), or
39 shall, upon a request by the parent, the legal guardian, or the child's
40 attorney, or upon its own motion, set the matter for hearing.

(h) If the court grants the request, or modifies and then grants the request, the order for authorization is effective until terminated or modified by court order or until 180 days following the date of the order, whichever is earlier.

(i) Psychotropic medication or psychotropic drugs are those medications administered for the purpose of affecting the central nervous system to treat psychiatric disorders or illnesses. These medications include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants.

(j) (1) Psychotropic medications may be administered without court authorization in an emergency. An emergency exists if all of the following conditions are met:

(A) A physician finds that the child requires psychotropic medication to treat a psychiatric disorder or illness.

(B) The medication is immediately necessary for the preservation of life or the prevention of serious bodily harm to the child or others. It is not necessary for the harm to take place or become unavoidable prior to treatment.

(C) It is impractical to obtain authorization from the court before administering the psychotropic medication to the child.

(2) Court authorization shall be sought as soon as practical, but in no case more than two court days after the emergency administration of psychotropic medication.

(k) This section is not intended to supersede local court rules regarding a minor's right to participate in mental health decisions.

(l) Nothing in this section grants any person the authority to administer psychotropic medication to a child who orally refused or otherwise indicates a refusal of treatment with the authorized medication. A child's objection to or noncompliance with, the authorized psychotropic medication is a treatment issue to be resolved by the physician prescribing the medication. No person shall threaten, coerce, withhold privileges, or otherwise penalize a child for refusing to take a psychotropic medication. A child cannot be forced to take psychotropic medication unless otherwise specifically permitted by statute.

~~(t)~~

(m) This section shall not apply to nonminor dependents, as defined in subdivision (v) of Section 11400.

1 ~~(m)~~

2 ~~(n)~~ This section shall become operative on July 1, 2016.

3 SEC. 5. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

O